

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY WILLIAMS,

Petitioner,

-against-

J. NOETH,

Respondent.

21-CV-0054 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Petitioner, proceeding *pro se* and *in forma pauperis*, is currently incarcerated in Attica Correctional Facility. Petitioner filed this *habeas corpus* petition under 28 U.S.C. § 2254 challenging a 2013 Bronx County conviction.¹ By order dated January 6, 2021, Judge Stanton ordered Petitioner to show cause within sixty days why the petition should not be dismissed as untimely. For reasons that are unclear, the January 6, 2021 order was mailed to Petitioner at an outdated address. It was returned as undeliverable, and the matter was dismissed on April 15, 2021. Petitioner then wrote two letters to the Court stating that he never received the January 6, 2021 order. Petitioner's contact information on the docket has been updated, and the matter has been reassigned to my docket. The Court construes Petitioner's correspondence as a motion to reopen this action. That motion is GRANTED.

CONCLUSION

Petitioner is directed to file a declaration showing cause why the *habeas corpus* petition, filed under 28 U.S.C. § 2254, should not be dismissed as time-barred. The Court refers Petitioner

¹ Petitioner filed the petition in the United States District Court for the Western District of New York. That court transferred the matter here. *See Williams v. Noeth*, No. 20-CV-01909 (W.D.N.Y. Jan. 4, 2021).

to the January 6, 2021 order, which explains what information he needs to provide, and to which a declaration form is attached. Petitioner must submit the declaration to this Court's Pro Se Intake Unit within sixty days of the date of this order, and label the document with docket number 21-CV-0054 (LTS). No answer shall be required at this time. If Petitioner timely files a declaration, the Court shall review it, and if proper, shall order the Respondent to answer. If Petitioner fails to comply with this order within the time allowed, and cannot show good cause to excuse such failure, the petition will be denied as time barred.

CONCLUSION

The Clerk of Court is directed to vacate the order of dismissal and the civil judgment (ECF Nos. 8, 9) and reopen this action.

Because Petitioner has not at this time made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Clerk of Court is further directed to mail a copy of this order and the January 6, 2021 order (ECF 6) to Petitioner and note service on the docket.

SO ORDERED.

Dated: June 1, 2021
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the first and last name of each plaintiff or
petitioner.

Case No. _____ CV _____

-against-

Write the first and last name of each defendant or
respondent.

DECLARATION

Briefly explain above the purpose of the declaration, for example, "in Opposition to Defendant's Motion for Summary Judgment," or "in Response to Order to Show Cause."

I, _____, declare under penalty of perjury that the

following facts are true and correct:

In the space below, describe any facts that are relevant to the motion or that respond to a court order. You may also refer to and attach any relevant documents.

Attach additional pages and documents if necessary.

Signature

Prison Identification # (if incarcerated)

Zip Code

E-mail Address (if available)